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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION

14 UNITED STATES OF AMERICA, ) No. CR 09-00693 CW  
15 Plaintiff, ) STIPULATION AND [PROPOSED]  
16 v. ) ORDER TO CONTINUE HEARING  
17 NATHAN WILLIE GARDNER, JR., )  
18 Defendant. )  
19 \_\_\_\_\_)

20  
21 Plaintiff, by and through its attorney of record, and defendant, by and through his attorney  
22 of record, hereby stipulate and ask the Court to find as follows:

23 1. A status conference in this matter is currently scheduled for 2 p.m. on Wednesday,  
September 23, 2009.

24 2. The parties request that this hearing be continued until 2 p.m. on Wednesday,  
October 7, 2009, because defendant's counsel requires additional time to review the discovery  
produced in this matter and determine whether or not defendant will file motions or plead guilty  
in this case, or take other courses of action.

STIPULATION AND PROPOSED ORDER  
TO CONTINUE HEARING  
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1           3. The parties believe that failure to grant the above-requested continuance would  
2 deny defendant continuity of counsel, would deny defendant's counsel and defendant the  
3 reasonable time necessary for effective preparation taking into account the exercise of due  
4 diligence, and that the ends of justice served by continuing the case as requested outweigh the  
5 interest of the public and defendant in a trial within the date prescribed by the Speedy Trial Act.

6       4. Thus, the parties respectfully request that the Court find that the time period from  
7 September 23, 2009, to October 7, 2009, is excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A),  
8 (B)(iv) because it results from a continuance granted by the Court at the defendant's request and  
9 on the basis of the Court's finding that the ends of justice served by taking such action outweigh  
10 the best interest of the public and the defendant in a speedy trial and because failure to grant the  
11 continuance would unreasonably deny defendant continuity of counsel and would unreasonably  
12 deny defense counsel the time necessary for effective preparation for trial, taking into account  
13 due diligence.

## **14** IT IS SO STIPULATED.

**JOSEPH P. RUSSONIELLO  
United States Attorney**

17 || Dated: September 22, 2009

/s/  
**GARTH HIRE**  
Assistant United States Attorney  
Attorney for United States of America

Dated: September 22, 2009

/s/  
ALAN DRESSLER  
Attorney for Nathan Gardner, Jr.

1 [PROPOSED] ORDER

2 FOR GOOD CAUSE SHOWN, THE COURT ADOPTS THE FINDINGS OF FACT AND  
3 CONCLUSIONS OF LAW STIPULATED TO BY THE PARTIES. THEREFORE, IT IS SO  
4 FOUND AND ORDERED THAT:

- 5 1. The currently scheduled September 23, 2009, status conference hearing is vacated.  
6 A status conference hearing is now scheduled for 2:00 p.m. on October 7, 2009.
- 7 2. The time period from September 23, 2009, to October 7, 2009, is deemed  
8 excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A), (B)(iv) because it results from a continuance  
9 granted by the Court at the defendant's request and on the basis of the Court's finding that the  
10 ends of justice served by taking such action outweigh the best interest of the public and the  
11 defendant in a speedy trial and because failure to grant the continuance would unreasonably deny  
12 defense counsel the time necessary for effective preparation for trial, taking into account due  
13 diligence. The Court finds that nothing in this stipulation and order shall preclude a finding that  
14 other provisions of the Speedy Trial Act dictate that additional time periods are excludable from  
15 the period within which trial must commence.

16  
17 DATED: September 22, 2009



18 HONORABLE CLAUDIA WILKEN  
19 UNITED STATES DISTRICT JUDGE